

LUTHER THOMAS EDENS

OCTOBER 14 (legislative day, OCTOBER 12), 1943.—Ordered to be printed

Mr. ELLENDER, from the Committee on Claims, submitted the following

REPORT

[To accompany S. 1288]

The Committee on Claims, to whom was referred the bill (S. 1288) for the relief of Luther Thomas Edens, having considered the same, report favorably thereon with the recommendation that the bill do pass with the following amendments:

Page 1, line 6, strike out the figures "\$10,500" and insert in lieu thereof the figures "\$3,500".

Page 1, line 11, strike out period at end of line, substitute colon therefor, and insert:

Provided, That no part of the amount appropriated in this Act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding \$1,000.

The purpose of the proposed legislation is to pay to Luther Thomas Edens the sum of \$3,500 in full settlement of his claim against the United States arising out of the death of his minor daughter, Clara Edens, and personal injury to his minor daughter, Bettie Edens, resulting from an accident involving a United States Army truck on Highway No. 17, at Scotts Hill, N. C., on April 22, 1943.

STATEMENT OF FACTS

The report of the War Department, dated September 6, 1943, states that on the afternoon of April 22, 1943, an Army truck operated by an enlisted man and transporting a quantity of automobile tires was proceeding south on United States Highway No. 17 toward Wilmington, N. C., at a speed of about 35 miles per hour. A noncommissioned officer was riding on the seat with the driver and two other enlisted men were riding in the back of the truck. The weather was

fair and the three-lane concrete highway was in good condition. Upon reaching a point in the vicinity of Scotts Hill, near the Pender-New Hanover County line, at about 2:45 p. m., the truck overtook two girls, Clara Edens, age 9 years, and Bettie Edens, age 8 years, daughters of Luther Thomas Edens, of Scotts Hill, N. C., who were riding on a bicycle in the same direction on the right-hand side of the pavement. The Army driver turned to the left to pass the girls, but apparently either did not allow sufficient clearance or turned back to the right too quickly, with the result that the truck came in contact with the bicycle. The two girls were thrown from the bicycle. Bettie Edens sustained a fracture of the left humerus, and Clara Edens sustained injuries from which she died shortly afterward while being taken to a hospital.

Since the deceased, Clara Edens, was a minor and did not contribute to the support of her family, and since the injured child, Bettie Edens, also a minor, did not sustain any permanent disability, nor were hospital or medical expenses incurred in her behalf, your committee feel that the sum of \$10,500 is excessive, and have reduced it to \$3,500. The War Department, in its report to the committee, states that it is the view of the Department that the proximate cause of the accident was the negligence of the Army driver either in failing to allow sufficient clearance when attempting to pass the bicycle or in returning to the right-hand side of the road too quickly after having swerved his vehicle to the left.

Your committee, having carefully considered the evidence in the case, recommend favorable consideration of the proposed legislation, as amended.

Attached hereto is report from the War Department together with other pertinent evidence.

WAR DEPARTMENT,
Washington, D. C., September 6, 1943.

HON. ALLEN J. ELLENDER,
Chairman, Committee on Claims, United States Senate.

DEAR SENATOR ELLENDER: The War Department is opposed to the enactment of S. 1288, Seventy-eighth Congress, in its present form. This bill would authorize and direct the Secretary of the Treasury to pay to Luther Thomas Edens the sum of \$10,500, in full settlement of his claim against the United States arising out of the death of his minor daughter, Clara Edens, and personal injury to his minor daughter, Bettie Edens, resulting from an accident involving a United States Army truck on Highway No. 17, at Scotts Hill, N. C., on April 22, 1943. The Department, however, would interpose no objection to the enactment of the bill if it should be so amended as to authorize the payment of \$3,500 to Mr. Edens.

On the afternoon of April 22, 1943, an Army truck operated by an enlisted man and transporting a quantity of automobile tires was proceeding south on United States Highway No. 17 toward Wilmington, N. C., at a speed of about 35 miles per hour. A noncommissioned officer was riding on the seat with the driver and two other enlisted men were riding in the back of the truck. The weather was fair and the three-lane concrete highway was in good condition. Upon reaching a point in the vicinity of Scotts Hill, near the Pender-New Hanover County line, at about 2:45 p. m., the truck overtook two girls, Clara Edens, age 9 years, and Bettie Edens, age 8 years, daughters of Luther Thomas Edens, of Scotts Hill, N. C., who were riding on a bicycle in the same direction on the right hand side of the pavement. The Army driver turned to the left to pass the girls, but apparently either did not allow sufficient clearance or turned back to the right too quickly, with the result that the truck came in contact with the bicycle. The two girls were thrown from the bicycle. Bettie Edens sustained a fracture of the left humerus, and Clara Edens sustained injuries from which she died shortly afterward while being taken to a hospital.

There appears to have been no eyewitnesses to the accident. The Army driver stated:

"* * * I noticed two girls riding on a bicycle in the same direction we were traveling. Seeing that they had difficulty in controlling the bicycle, I prepared to pass carefully, decreasing speed in order to have better control of the truck. I guided the vehicle around the bicycle at a good distance away; as nearly as I can judge the left wheels of the truck were about a foot and a half over the white line marking the center lane. When I thought I was far enough away to clear I started to come back to the position in the lane I had occupied before starting to pass. As I was straightening out, I heard a bump in the rear of the vehicle. I glanced through the rear-view mirror, thinking that perhaps one of the tires had fallen off. I could see nothing, so I stopped the truck alongside the highway. When I jumped off the truck, I saw the girls lying in the road."

The noncommissioned officer who was riding on the front seat of the truck with the driver stated:

"* * * we were traveling at the rate of 35 to 38 miles per hour on Scotts Hill. We noticed two girls riding on a bicycle. We passed them in the center lane, and as far as I could see, passed them safely."

"When I felt the bump in the rear of the truck, I didn't realize that we had come in contact with the bicycle."

The investigating officer stated:

"Extent of injuries due to accident:

"1. Miss Clara Edens sustained a crushed pelvis and fractured skull and died en route to hospital.

"2. Miss Betty Edens, sister of deceased, suffered a fractured left humerus. She was treated at James Walker Memorial Hospital, Wilmington, N. C.; discharged from the hospital on April 22, 1943. The attending physician declared to the investigating officer that the child's condition was good at her discharge from the hospital and that no permanent disability was expected. He further stated however, that no definite statement regarding permanent disability could be made until the child would be released from medical supervision, which would not take place for 2 or 3 months."

No claim has been filed with the War Department as a result of this accident.

The records of the War Department do not disclose any statement of the burial expenses incident to the death of Clara Edens, but, as it appears that her parents are in modest circumstances, it is presumed that such expenses were moderate. There is of record a bill in the amount of \$38 for services rendered to Bettie Edens at the James Walker Memorial Hospital, Wilmington, but the investigating officer states that "since she is a charity case, no expenses are involved."

The damage to the bicycle on which the girls were riding was estimated by the investigating officer at \$2 to \$4.

It is the view of the War Department that the proximate cause of the accident was the negligence of the Army driver either in failing to allow sufficient clearance when attempting to pass the bicycle or in returning to the right-hand side of the road too quickly after having swerved his vehicle to the left. The Department, therefore, feels that Mr. Edens should be compensated in a reasonable amount. The proposed award of \$10,500 would be excessive, but no objection would be interposed to the enactment of the bill if it should be so amended as to pay to Mr. Edens the amount of \$3,500 (\$3,000 for the death of Clara Edens; and \$500 for the injury sustained by Bettie Edens), which amount, it is believed, would constitute a fair and reasonable settlement in view of the age of Clara Edens (9 years) at the time of her death, and of the fact that Bettie Edens does not appear to have sustained any permanent disability.

The fiscal effect of the bill is manifest.

A similar report on H. R. 3034, Seventy-eighth Congress, a similar bill for the relief of Luther Thomas Edens, was submitted to the Bureau of the Budget, which advised that there would be no objection to the submission of that report.

Sincerely yours,

HENRY L. STIMSON,
Secretary of War.

JUNE 12, 1943.

In re: Death of Clara Edens.

HON. GRAHAM A. BARDEN,
Member of Congress, Washington, D. C.

DEAR GRAHAM: You wrote me a few days ago asking for the ages of the injured and dead Edens children. Clara Edens, deceased, was 9 years old; Bettie Edens, who suffered a broken arm and other injuries, is 8 years old.

You already have a transcript of the evidence before the coroner. There was another witness who was not available for the coroner's inquest. I have talked to him since that inquest was held. He was W. W. Higgins, Scotts Hill, N. C. He saw the accident when it occurred and was nearby. The deceased and her injured sister were riding southwardly along United States Highway No. 17, on a bicycle, and the bicycle was traveling about 18 inches from the northwestern edge of the hard-surfaced portion of the highway (right-hand side in the direction they were traveling). It was during the daytime; the weather was clear and the road was dry. At this point the road is straight and level for a considerable distance in both directions and is a three-lane highway. There was no other traffic on the highway. The defendant driving an Army truck drove into the rear of the bicycle at a high rate of speed, approximately 50 miles per hour, and as a result Clara was killed and Bettie was injured. This is the substance of Mr. Higgins' testimony. I do not know the result of the court martial. To me the facts point to extreme negligence and recklessness on the part of the driver of the truck, Edwin Ducas. The parents and injured child are entitled to liberal compensation, both for the injury and for the death and extreme worry given them by the procedure of the military authorities, who refused the civil authorities' request for jurisdiction, and who have clearly indicated that they did not take the matter seriously. I hope that you can obtain for them substantial compensation and I do not believe that their request is unreasonable. The girls were high type. The family is a good family but poor. Of course, we know that no money compensation will repair the damage done, but know that compensation will certainly assist them in this trying moment, which is perhaps the most tragic moment of their lives.

Sincerely,

CLIFTON L. MOORE.

STATE OF NORTH CAROLINA,
County of Pender:

Coroner's inquest: In the matter of Clara Edens, deceased. A. C. Blake, acting coroner; Esther O. Blake, stenographer.

Mrs. J. N. Edens, first being duly sworn, testified as follows:

"My name is Mrs. J. N. Edens, and I live at Scotts Hill, N. C., the first house after you pass the New Hanover County line. I knew Clara Edens before her death, and I am her aunt. Clara Edens is now dead, and she died at a quarter to 3, Thursday afternoon, April 22, 1943. She was on the highway, right in front of my house, in Pender County, on Highway No. 17, the one that leads from Wilmington to New Bern, N. C. I saw the child just before an Army truck, that was coming down the highway, struck her, and just as I opened the door to my house the truck struck her. When it struck her she was thrown off the highway, and her head was laying cater-cornered at the time she died. When I reached her, she was 12 or 18 inches off the hard surface on the right-hand side when you are going northwest. At the time of the accident, the child was riding on the seat of a bicycle. Her sister was taking her for a ride. Her sister's name is Betty Edens.

"They were riding toward Wilmington, and the motor vehicle that struck her was also going toward Wilmington. I do not know the name of the driver of the motor vehicle which struck her. However, the truck which struck her was an eight-wheel Army truck. Although I do not know the name of the driver, it is the man sitting here in the courtroom, I am positive of that. I would know him if I saw him a hundred years from now. I couldn't say what speed the man was driving the motor vehicle that hit the children, but he didn't slow down until we started hollering and then he looked back and stopped about a city block from the accident. There wasn't another person in sight until we had the children on the porch. The sun was shining bright at the time the accident occurred, and the road was good and dry. Clara had turned around at the store, the store on the left-hand side of the highway, and was coming back

when I saw her, and she had ridden about the length of that [pointing at a desk in front of her] table. There was one boy in the front seat with the driver of the vehicle, and two I believe that I would be able to identify them. I didn't see the truck when it hit the bicycle but just before the accident, and right after it hit.

"I knew Clara Edens from childhood and she was in perfect health. As far as I know, she was not suffering from any disease whatsoever. The other child was riding on the bicycle with Clara, and when we took her to the hospital, we found out that her arm was broken. We took them to the hospital in Wilmington. The man who was driving the car that struck the children did not make any kind of a statement, other than asking me if I wanted him to call an ambulance to carry the children to the hospital. I told him to get me to the hospital quickly. We took them in Mr. Rigg's automobile."

Mr. E. T. Pullen, one of the jurors, asked Mrs. Edens the following questions:

"Question. Did this man help you get the children off of the highway?"

"Answer. I picked up the dead one and handed it to him, and then told him to take her and put her on the porch at my house; then I picked up the other one and took her in.

"Question. Did he remain there to help you, or did he leave before you took the children to the hospital?"

"Answer. When we left, he was still there by the car. That is all I know about him."

Mrs. Edens resumed her testimony as follows:

"The highway is a good wide highway where the accident occurred, and it is a three-lane highway—two white lines. There was no other traffic on the highway at that time, at least not until after the accident when people started crowding around the children. The driver of the truck got out, and since he was the closest person to me when I got to the children, I handed him the one I had in my arms, and I got the other one. He ran to the porch with the one I gave him and then I drove on down to Wilmington to the hospital with the children, leaving him standing right there."

Mr. W. M. Whitely, of the North Carolina Highway Patrol, being first duly sworn, testified as follows:

"My name is W. M. Whitley, and I am a North Carolina State highway patrolman. I was called to investigate an automobile accident resulting in the death of Clara Edens, at Scotts Hill, N. C. It was approximately 3:30 p. m., when I got the radio message of an accident over on No. 17 at Scotts Hill. I was at that time in lower Brunswick County, about 7 miles from Supply. The nature of the message was that there was one fatality and one in James Walker Hospital in Wilmington. I proceeded to Wilmington to James Walker Hospital and found both of the children there, and learned that one of them was dead, and the other had a broken arm. I tried to find out how the accident occurred, and I talked to Mrs. Skipper and Mrs. Olive Higgins. Mrs. Skipper pointed out to me where the truck stopped beside the highway. It was also pointed out to me where the bicycle was lying on the side of the road and where the children were picked up. I measured the distance with a steel tape from the point that was shown to me where the bicycle was lying to where the truck was stopped. Just where the bicycle left the road—that is, the hard surface—it skidded across the shoulder of the road, and I measured from there to the truck and it measured 420 feet. I then measured where the bicycle stopped to the point of the impact, as was pointed out to me, and it measured 14 feet.

"The children, according to the way it was pointed out to me, were 36 feet from the point of the impact when they came to rest after the accident. I later found out, when I went to Camp Davis, that the name of the driver was Edwin Ducas, and that he was from Camp Davis. I went over to Camp Davis this morning and asked the military police if I could talk to him. They took me to him, and after I had warned him of his constitutional rights, proceeded to ask him a few questions. He didn't have very much to say about the matter. He gave me his name, and told me that he was 20 years old, and that his home is in Brooklyn. I asked him several other questions which he refused to answer. The highway, at the point where the accident occurred, is 33 feet wide. It is a three-lane highway, and it was straight where the children were hit. It is also practically level, not hilly. There was no obstruction to view along that portion of the highway. When I got there, the road was in good condition, dry, and it was fair weather."

Mrs. N. R. Skipper, being first duly sworn, testified as follows:

"My name is Mrs. N. R. Skipper. I knew Clara Edens, and had known her for some time. When I got to the scene of the accident, this boy was holding her and the back of her head was crushed in. She was dead as well as I could tell. I did not notice any markings on the highway caused by tires skidding, nor did I notice where the bicycle was lying when I arrived at the scene of the accident.

I have lived in Scotts Hill for about 4 years, and have known Clara Edens when I saw her for that number of years. As a matter of fact, I have taught her in school. As far as I know, she was in very good health. I didn't talk to anyone about the accident when I got there, but the boy who was driving the truck asked somebody for some cold water, please, and I got some for him. He made no other statement to me, except that he was the driver of the truck which had hit the girls."

Mr. N. R. Skipper, being first duly sworn, testified as follows:

"I am Mr. N. R. Skipper, and I am the husband of the witness just before me. Yesterday afternoon, around 2:30 or 2:45 my wife and myself were in the dining room of our home, my wife having just returned from Wilmington, and at the time it was very quiet on the highway. Not very much traffic. About that time, I heard something which sounded like a vehicle hitting something, and I told my wife to run out and see what it was. She said that someone had been run over. I looked up the road just a ways and saw what had happened and this man here had one child running to the porch with her, and Mrs. Edens had the other one in her arms. Mrs. Edens asked me to get in my car and go to the field and get the father of the children. While I was gone to get the father, I was gone probably 15 minutes, Mrs. Edens and the two children left, and they were already gone when we got there. The truck was still there, however. I guess about the next thing I know about it, I took the father and a lady to Wilmington to the hospital where the children were. I have not seen Clara Edens since. I had no conversation with the man who was driving the vehicle which struck the children. I didn't talk with anyone else except the State highway patrolman. I didn't talk with anyone who was at the scene of the accident. I saw the dead child at the hospital, and the other one, too."

Mrs. Olive Higgins, being first duly sworn, testified as follows:

"My name is Mrs. Olive Higgins, and I live at Scotts Hill, and I was home at the time of the accident, and heard the impact and looked out of the window. I saw the children lying on the road and immediately ran to them. When I got there the others had picked them up. I didn't see the bicycle or the truck before the accident. I didn't talk or have any conversation with the driver of the Army truck. When I got to the scene of the accident, I tried to get them not to move the children until an ambulance arrived, but they were so upset that they went ahead and took them to Wilmington. The driver of the truck seemed anxious to help all he could. I saw that the deceased child was in the worst condition, and I told him to take her to the house. He then asked me for some water, and after he got some, he stood there and bathed the child. Then the car came, and they took them to the hospital. When I got to the scene of the accident, the children were lying a few inches away from the hard surface on the shoulder of the highway."

Mr. E. T. Pullen, one of the jurors, asked the following questions:

"Question. From the time the children were knocked off the wheel, to the time they took them to the hospital, how much time was consumed?"

"Answer. I would say about 10 minutes."

"Question. If they knew the child was dead, why did they take her to the hospital?"

"Answer. I didn't believe that the child was dead."

"Question. It was possible that it was living?"

"Answer. I didn't make a thorough examination of the child, but they all said that she was dead and took her on to the hospital."

Mrs. Higgins proceeded as follows:

"The bicycle was partially on the children when I arrived at the scene of the accident. Part of the wheel was on one of the children's feet."

Mr. Forest Mallard, a juror, asked the following question:

"Question. Mrs. Higgins, did you go to the hospital?"

"Answer. No, sir."

"Question. How long did the driver of the truck and the truck remain at the scene of the accident after they took the children to the hospital?"

"Answer. Some little time, but I couldn't say exactly."

Mr. J. F. Swan, being first duly sworn, testified as follows:

"I live at Scotts Hill just a little way from the New Hanover County line. I have lived there for about 15 years. I was not at the scene of the accident, but I heard the women screaming and hollering and carrying on. I walked over there and Mrs. Skipper was standing talking to someone. I talked to the men who were in the truck, and they said that they thought it best to wait until the highway patrolman arrived before they went on. After that I walked back up to the store. It was about 15 or 20 minutes before the patrolman came after I got back to the store. The truck and the driver were both gone when the patrolman arrived,

after they had said that they thought it best to remain there for him. I wanted the captain, one of the soldiers in the car, to keep the truck there for the patrolman, but they didn't stay. I didn't see the children or the bicycle when I got there. They had removed the bicycle, I suppose, for I didn't see it."

Mr. W. M. Whitley, State highway patrol, was recalled to the stand and testified as follows:

"There was something on the road which I took for ice cream or milk. I was under the impression that the children had some milk with them when they were hit. I didn't see any other marking on the highway, that is the hard surface, just some skid marks on the shoulder where the bicycle had skidded. I measured the distance where the bicycle stopped and it was approximately 14 feet from the point of impact, and the children were some 36 feet from the point of the impact. That is according to the markings pointed out to me when I arrived there, 2½ hours later. I am not absolutely certain of these markings; I was just taking someone else's word for it. I heard that Mrs. Higgins said that the bicycle was lying partially on the body of the deceased, therefore, I must have been misinformed about the distance of the bicycle and the children from the point of the impact. Mrs. Higgins was in a better position to know about it. About the markings on the shoulder, I am not certain, for it is rather sandy there and grass is growing there also, and it would be difficult for me to say for sure if the markings I saw were skid marks—in fact they could have been made by people standing around. I didn't see any blood at all. I couldn't satisfy myself, from the markings I saw, as to where the bodies were lying on the shoulder. I do not recall who gave me the information as to where the children were lying."

Close of testimony.

After a deliberation of approximately 15 minutes, the jury returned with the following verdict, read by Forest Mallard, foreman of the jury:

STATE OF NORTH CAROLINA,
County of Pender:

Be it remembered, that on the 22d day of April 1943, I, A. C. Blake, acting coroner of said county, attended by a jury of good and lawful men, viz, Forest Mallard, N. C. Blake, J. W. Waddell, E. T. Pullen, E. L. Nicholson, and J. H. Carlton, by me summoned for the purpose, according to law, and after being by me duly sworn and empaneled at Scotts Hill, N. C., in Topsial Township, Pender County, did hold an inquest over the circumstances of the death of the deceased, from a view of the corpse and a consideration of all the testimony to be procured, the jury finds as follows, that the deceased, Clara Edens, came to her death from an automobile accident by an Army truck driven by Edwin Ducas, and we recommend that he be held for grand jury investigation.

C. F. MALLARD, Jr., *Foreman.*
N. C. BLAKE.
J. W. WADDELL.
E. T. PULLEN.
E. L. NICHOLSON.
J. H. CARLTON.

Acting Coroner A. C. BLAKE (to jury). So say you all?

Members of jury affirmatively nod heads.

Appearances: Clifton L. Moore, solicitor, eighth judicial district.

[Copy]

NO. 51 INDICTMENT—MANSLAUGHTER, SUPERIOR COURT, APRIL TERM, A. D. 1943

STATE OF NORTH CAROLINA,
Pender County:

The jurors for the State upon their oath present that Edwin Ducas late of the county of Pender on the 22d day of April in the year of our Lord one thousand nine hundred and forty-three, with force and arms, at and in the county aforesaid, did, unlawfully, willfully, and feloniously kill and slay one Clara Edens contrary to the statute in such case made and provided and against the peace and dignity of the State.

CLIFTON L. MOORE, *Solicitor.*

